



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Documentation and Case Record and Report Contents

Subcommittee

Reporting and testimony

Type of Work Product

Adjudication of Public Comments on Draft Document

Public Comment Summary

The Commission received eight comments addressing the views document “Documentation and Case Record and Report Contents.” Three comments were anonymous, two were from institutions, and three were from people who identified themselves, including two Commissioners.

Adjudication Process Used by the Subcommittee

The subcommittee met in person on August 10, 2015, conducted a telephonic meeting on October 2, 2015, and engaged in a number of e-mail exchanges to address and resolve each comment. The subcommittee voted unanimously to move the views document forward to the Commission.

Itemized Issues and Adjudication Summary

1. One anonymous commenter suggested including the work conducted by technical reviewers to view #1 and including in view #4 all the information known to the analyst (whether task relevant or not) at the time he or she conducted each step of the analysis.

In response, the subcommittee added language to view #1 that records should be created “during the technical review of the work performed” as well as during the examination itself. With respect to the second suggestion, the subcommittee expects to submit a recommendations document recommending that documentation of both task relevant and task irrelevant communications be made part of the case record and not part of the report.

2. A second anonymous person had two comments.
 - The commenter expressed an overarching concern that much of what was addressed in this document had been or was being addressed in other subcommittees.
 - The commenter suggested that “discordant results” be defined and that we delete “results” and change the language to discordant “opinions or interpretations”; that we address why some items listed in the NAS report had been left out; and wondered if the need for such an obvious statement as that found in view #5 was more a problem of training the legal community than a “forensic science issue.”

In response, the subcommittee has added language to view #4 to include the items that were identified in the NAS report and cited to in the background section and added “conclusions” and “interpretations” to “discordant results.” The subcommittee will address “discordant results, interpretations, or conclusions” in greater detail in a later recommendations document, and the subcommittee will discuss with greater specificity discordant results that need to be included in

reports and when different results can simply be documented in the case record. For purposes of this work product, the subcommittee believes the dictionary definition of discordant is sufficient.¹ View #5 is a point of intersection between the forensic community and the courts. Although the statement may be obvious to some or even most forensic science practitioners (FSSPs) and forensic medicine practitioners (FMSPs), it is not obvious to many lawyers and judges. Because reports are a communication from FSSPs and FMSPs to the courts this language is included to avoid unintentionally misleading those relying on the report. Although the subcommittee supports training, training is a resource-intensive, long-term project. This statement, on the other hand, is short and easily reproduced. Finally, the subcommittee has considered the documents produced by the Commission and those currently under consideration. It is the view of the subcommittee that the document is not duplicative. In particular, the document is not duplicative of the recommendation for universal accreditation. Not all FSSPs and FMSPs are accredited, and many may not be for some time, but documentation and the contents of case records and reports are issues of immediate concern. In addition, as the subcommittee moves forward to address in greater detail documentation and case record and report contents by assessing the resources identified in appendix A, the recommendations likely will enhance and expand on current accreditation requirements.

3. Ms. Murga raised the point that for some disciplines, access to records and documentation (e.g., photographs, bench notes) may not be sufficient to allow for an independent analysis. Instead, an independent analysis may require access to the items being tested or examined (e.g., bullets).

The subcommittee understands that this may be the case in some instances and that the frequency of this problem may change with technological improvements. Under these circumstances, view #1 can be satisfied by maintaining the items.

4. Dr. Crouse had three comments.

- She praised the document for providing a “path of transparency for the laboratory” and rightly pointed out that the document needs a title.
- She recommended a definition of “case file.”
- Although she was of the view that the statement sought by view # 5 would be “very beneficial.” Dr. Crouse suggested shortening the statement.

In response to these comments, the subcommittee has made three changes: 1) They retitled the document “Documentation and Case Record and Report Contents.” 2) They added a definition for case files. 3) They provided sample language in the background section that would satisfy view #5 but is shorter than the view itself.

5. Mr. Hunt had three comments.

- He also sought a definition of “case file” and suggested instead using the term “case record” and its definition in the ASCLD/LAB International Supplemental Requirements for the Accreditation of Forensic Science Testing Laboratories.

The subcommittee adopted this suggestion but added “communications” to the definition of case record in response to the comment above that task-relevant and task-irrelevant communications be documented.

¹ “Disagreeing or incongruous” (Oxford), “being at variance” (Merriam Webster).

- He expressed the view that accreditation standards already meet the requirements outlined in the first four views, and that it was incorrect to state that accreditation standards “increasingly” require the proposed level of documentation.

The subcommittee is not prepared to opine whether all accreditation programs for FSSPs and FMSPs require the level of documentation identified in this views document or whether all accreditation standards have always required this level of documentation, and will instead refer specifically to the current ISO/IEC standard 17025 and issue the opinion that standards are increasingly requiring this level of documentation with respect to discipline specific standards. Thus, the sentence will be rewritten as follows: “Accreditation standards and increasingly many discipline specific standards require this level of documentation. See ISO/IEC 17025:2005 standard 5.10 and other items listed in Appendix A.”

- He argued that the conclusion of the NAS report that “most” forensic testing reports did not meet this standard was not well founded and should be removed from the document, particularly in light of the current accreditation requirements.

In response, the subcommittee contacted the National Academies of Science for comment. The response provided made clear this was the opinion of the committee based on a variety of presentations and submissions by individuals and scientific working groups on the state of reporting as of 2009. The number of FSSPs and FMSPs in the United States is currently not known, but it is likely that the number of unaccredited FSSPs and FMSPs is significantly larger than the number of accredited FSSPs and FMSPs, even with recent increases in the number of accredited FSSPs and FMSPs. As a result, the subcommittee has modified the sentence in question as follows: “As of 2009, the report concluded that while some forensic testing reports met this standard, ‘most’ did not.”

6. The National Association of Criminal Defense Lawyers encouraged the Commission to adopt the document and move forward with specific recommendations to end the “common practice of one and two sentence” reports.

The subcommittee is moving forward with more specific recommendations.

7. The American Society of Crime Laboratory Directors (ASCLD) had two comments.

- The ASCLD’s principal comment was that the case record should not be disclosed as specified in the discovery recommendations of the Commission, primarily because the Commission’s discovery recommendations are too onerous.

For the reasons articulated in the Commission’s discovery recommendation, the subcommittee remains of the view that the case record should be available through the discovery process and that it should be provided sufficiently in advance of a trial so that the party seeking the case record can make use effective use of the information.

- ASCLD commented that the statement in view #5 was stating the obvious and did not need to be included.

For the reasons explained above, the subcommittee is retaining view #5 but has provided a short version to be included in reports.